

Application No. 10/767,351
Reply to Office Action of October 23, 2007

REMARKS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-32 are currently pending.

In the outstanding Office Action, Claims 1-32 were rejected under the judicially-created doctrine of obviousness-type double patenting, indicated in paragraph 1 of the outstanding Office Action and not 35 U.S.C. § 101 as claiming the same invention as that of U.S. Patent No. 6,707,567 as mistakenly stated in paragraph 2 of the outstanding Office Action. This matter was clarified in the telephone discussion as noted below.

With regard to the rejection under the judicially-created doctrine of obviousness-type double patenting, Applicant filed the attached Terminal Disclaimer with regard to U.S. Patent No. 6,707,567 on September 28, 2007, as indicated by the filing receipt that is also enclosed. As further indicated by Supervisory Patent Examiner Poon in a telephone discussion with Raymond F. Cardillo, Jr. (Reg. No. 40,440) on December 13, 2007, the judicially-created doctrine of obviousness-type double patenting, the basis of the outstanding rejection of Claims 1-32, and, thus, the rejection has been overcome by the Terminal Disclaimer.

Applicant notes that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp v. Union Sanitary District, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-5 (Fed. Cir. 1991).

Pursuant to the telephone discussion with Supervisory Patent Examiner Poon, attached herein is a copy of the Terminal Disclaimer filed on September 28, 2007 and including the date-stamped filing receipt.

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Accordingly, the pending claims are believed to be in condition for formal allowance.
An early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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